

ORIGINAL



0000110303

RECEIVED
BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2010 APR 21 P 2:06

KRISTIN K. MAYES—Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

APR 21 2010

DOCKETED BY

DOCKET NO. E-01575A-08-0328

DOCKET NO. E-01575A-09-0453

IN THE MATTER OF THE APPLICATION
OF SULPHUR SPRINGS VALLEY
ELECTRIC COOPERATIVE, INC. FOR A
HEARING TO DETERMINE THE FAIR
VALUE OF ITS PROPERTY FOR
RATEMAKING PURPOSES, TO FIX A
JUST AND REASONABLE RETURN
THEREON, TO APPROVE RATES
DESIGNED TO DEVELOP SUCH RETURN
AND FOR RELATED APPROVALS.

IN THE MATTER OF THE APPLICATION
OF SULPHUR SPRINGS VALLEY
ELECTRIC COOPERATIVE, INC. FOR AN
ORDER INSTITUTING A MORATORIUM
ON NEW CONNECTIONS TO THE V-7
FEEDER LINE SERVING THE
WHETSTONE, RAIN VALLEY, ELGIN,
CANELO, SONOITA, AND PATAGONIA,
ARIZONA AREAS.

SULPHUR SPRINGS VALLEY
ELECTRIC COOPERATIVE,
INC.'S OBJECTION AND
MOTION TO STRIKE LATE-
FILED INTEVENOR WITNESS
TESTIMONY

On April 15, 2010, Mr. Marshall Magruder, a witness on behalf of Intervenor Susan J. Downing in the above-captioned matters, filed with the Arizona Corporation Commission ("Commission") a *Notice of Filing Marshall Magruder's Testimony Summary with Responses to Oral Testimonies and Public Comments in Support of Intervenor Sue Downing* along with 62 pages of supplemental testimony (hereinafter collectively referred to as "Late-Filed Testimony"). Sulphur Springs Valley Electric Cooperative, Inc. ("SSVEC" or "Cooperative") hereby objects to this Late-Filed Testimony and requests that the Administrative Law Judge ("ALJ") strike such testimony for the reasons set forth below.

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

1 The ALJ's February 11, 2010, Procedural Order provided that direct and/or
2 responsive testimony on behalf of Intervenor was to be filed by March 16, 2010. The
3 Procedural Order also specifically provided that "rebuttal or surrebuttal testimony and
4 associated exhibits will be presented orally at the hearing."¹ At the March 19, 2010,
5 Procedural Conference, counsel for SSVEC raised a concern regarding Mr. Magruder's
6 pre-filed direct testimony, that was prepared and filed on behalf of Intervenor Susan J.
7 Downing, because it indicated that he was planning on supplementing his testimony:

8
9 *...in Mr. Magruder's prefiled testimony, on pages 59 and 68 and*
10 *perhaps elsewhere, it indicated that he will be providing*
11 *supplemental testimony and/or filings in relation to that testimony.*
Sulphur would object to any attempt to late file testimony or direct
*evidence.*²

12 At the 252 Hearing, Mr. Magruder was given an opportunity to provide oral
13 surrebuttal to the oral rebuttal testimony of SSVEC, and in fact did provide oral
14 surrebuttal. Thereafter SSVEC was provided its opportunity to cross-examine Mr.
15 Magruder on such surrebuttal testimony. At the conclusion of the 252 Hearing, the ALJ
16 asked each of the parties if they believed they received a fair hearing, and upon each
17 parties' affirmation of such, the ALJ closed the record (pending submission of
18 simultaneous closing briefs by the parties) and took the matter under advisement pending
19 submission of a Recommended Opinion and Order to the Commission.

20 The filing of the Late-Filed Testimony is a blatant violation of the ALJ's February
21 11, 2010, Procedural Order, as well as a violation of Commission practice and procedure.
22 Moreover, it is an attempt to supplement the record with what should be characterized as
23 extensive written Intervenor surrebuttal testimony, almost a month after the conclusion of
24 the hearing and the closure of the record. Such Late-Filed Testimony is hearsay,

25
26 ¹ February 11, 2010, Procedural Order at page 4, lines 7-8 (emphasis added.)

² Transcript of March 19, 2010, Procedural Conference at page 41, line 19 through page 42, line 1.

1 prejudicial to SSVEC, and appears to have been late-filed in an effort to: (i) supplement
2 the record without SSVEC having an opportunity to refute such testimony through cross-
3 examination; and (ii) inappropriately influence the ALJ and the Commission. Mr.
4 Magruder, who has participated in a number of Commission proceedings, knows or
5 should know that this filing is totally improper.

6 On the basis of the foregoing, SSVEC hereby objects to the Late-Filed Testimony
7 and requests the ALJ to strike such testimony. Additionally, as this is now the second
8 attempt by the Intervenors and/or Intervenor witnesses to file improper information
9 subsequent to the close of the record in this proceeding,³ SSVEC requests that the ALJ
10 admonish the Intervenors and their witnesses that as parties and/or witnesses on behalf of
11 the Intervenor parties in this proceeding, it is not appropriate for them to file any further
12 information in this docket unless expressly permitted by Commission practice.⁴

13 RESPECTFULLY SUBMITTED this 21st day of April, 2010.

14 SNELL & WILMER L.L.P.

15
16 By 

17 Bradley S. Carroll
18 One Arizona Center
19 400 East Van Buren
20 Phoenix, Arizona 85004-2202
21 Attorneys for Sulphur Springs Valley
22 Electric Cooperative, Inc.
23
24

25 ³ See SSVEC's Motion to Strike Portions of Intervenors' Closing Brief filed on April 19, 2010.

26 ⁴ It should be noted that each time an Intervenor or Intervenor witness has filed an objection or made an improper filing in this docket, SSVEC must respond to preserve its rights. This results in the Cooperative and its members incurring additional expenses.

1 ORIGINAL and 14 copies filed this
2 21st day of April, 2010, with:

3 Docket Control
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington
6 Phoenix, Arizona 85007

7 COPIES of the foregoing hand-delivered
8 this 21st day of April, 2010, to:

9 Steve Olea, Director
10 Utilities Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Wesley C. Van Cleve, Attorney
15 Charles Haines, Attorney
16 Legal Division
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington Street
19 Phoenix, Arizona 85007

20 COPY the foregoing sent via Facsimile and First
21 Class U.S. Mail this 21st day of April, 2010, to

22 Jane L. Rodda, Administrative Law Judge
23 Hearing Division
24 ARIZONA CORPORATION COMMISSION
25 400 West Congress
26 Tucson, AZ 85701-1347

COPY the foregoing sent via First Class
U.S. Mail this 21st day of April, 2010, to

Susan Scott
P.O. Box 178
Sonoita, AZ 85637

Susan J. Downing
HC 1 Box 197
Elgin, Arizona 85611

James F. Rowley, III
HC 1 Box 259
Elgin, Arizona 85611-9712

By Gina Ball